No. 15,268

IN THE

United States Court of Appeals

For the Ninth Circuit

CHIN BICK WAH,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S PETITION FOR A REHEARING.

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Subject Index

Page

Introductory statement 1

Summary of points on petition for rehearing 5

I.

The trial court erred in failing to instruct the jury on the essential elements of the substantive offense charged 9

1. It is fatal error to omit to instruct the jury on essential elements of the offense 9

2. An essential element of the crime charged in 18 USC 1546 is criminal intent 11

3. The court committed reversible error in failing to instruct the jury on criminal intent 14

4. The court erred in not giving instructions on the requirement of the materiality of the statements charged to be false, an essential element of the offense 16

II.

Failure of proof on any of the representations charged in the 6th count requires reversal 18

III.

The trial court erred in refusing to give defendant's requested instruction No. 20 19

IV.

The court committed prejudicial error in admitting into evidence testimony of statements and declarations of alleged co-conspirators after the termination of the conspiracy 21

1. Evidence was admitted of post-conspiracy statements and declarations made outside appellant's presence 21

2. The admission into evidence of such statements and declarations of alleged co-conspirators constituted prejudicial error 23

V.

Page

Error was committed in the pleading and proof of the conspiracy 30

1. Count 1 of the indictment was defective in charging two conspiracies, one of which did not join appellant as a defendant 30

2. Construing the indictment as charging only a single conspiracy, evidence of two conspiracies was introduced causing a variance which affected the substantial rights of appellant 33

3. The court committed error in denying appellant's motion to strike as to her, all of the evidence admitted as to incidents prior to January 1, 1950 35

Conclusion 36

Table of Authorities Cited

Cases	Pages
Bloch v. United States, 221 F.(2) 786	8
Brunewald v. U. S., 1 L.Ed.(2) 931	19
Christensen v. U. S., 90 F.(2) 152	14, 16
Dash v. U. S., 221 F.(2) 237	8
Drassos v. U. S. (C.C.A. 8) 16 F.(2) 833	15
Ex Parte Stewart, 47 F.Supp. 415	12
Grunewald v. United States, 1 L.Ed.(2) 931	1, 23, 32
Kotteakos v. United States, 328 U.S. 750	34
Krulewitch v. U. S., 336 U.S. 440	4, 23, 25, 29
Lutwak v. U. S., 344 U.S. 604	20, 23, 25, 26, 27, 29
Mesarosh v. U. S., 25 L.W. 4001	4
Morissette v. U. S., 342 U.S. 246	13, 15, 16
Morris v. United States, 156 F.(2) 525	8, 15
Paoli v. United States (Jan. 14, 1957) 352 U.S. ....., 1 L.Ed. (2) 278	26, 29
Screws v. United States, 325 U.S. 91	8, 11
U. S. v. Achtner, 144 F.(2) 49	12
U. S. v. Atkinson, 297 U.S. 157	8
U. S. v. Chicago Express, 235 F.(2) 785	13
U. S. v. Greenbaum, 123 F.(2) 770	14
U. S. v. Levy, 153 F.(2) 995	8, 9
U. S. v. Max, 156 F.(2) 13	8, 9
U. S. v. Starky, 52 F.Supp. 1 (E.D. Ill.)	12
U. S. v. Yabin, 159 F.(2) 705	8
Warszower v. U. S., 312 U.S. 344	18
Williams v. U. S. (C.C.A. D.C.), 131 F.(2) 21	10
Yates v. U. S. (June 17, 1957), 25 L.W. 4475	18, 32

Rules

Pages
Federal Rules of Criminal Procedure, Rule 52(b) 8

Statutes

8 U.S.C. 1202 ..... 16, 17
18 U.S.C. 80 ..... 14, 16
18 U.S.C. 641 13
18 U.S.C. 1546 ..... 6, 16

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APPELLANT'S PETITION FOR A REHEARING.

To the Honorable Chief Judge, and to the Honorable Associate Judges of the United States Court of Appeals for the Ninth Circuit:

INTRODUCTORY STATEMENT.

Appellant stands convicted in the District Court of two crimes: (1) conspiracy involving the immigration laws and (2) knowingly and wilfully making under oath false statements in application for Immigration visa and alien registration in Hong Kong, on March 5, 1952.

On May 28, 1957, this Court affirmed the conviction on both counts.

On May 27, 1957, the Supreme Court handed down its decision in *Grunewald v. United States,* 1 L.Ed.(2)

931. The court in that case struck down the efforts of the Government to broaden the scope of conspiracy cases to embrace subsidiary agreements to conceal evidence of the principal conspiracy.

In taking this action the Court stated:

> "Prior cases in this Court have repeatedly warned that we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions. The important considerations of policy behind such warnings need not be again detailed. See Jackson, J., concurring in Krulewitch v. United States, supra. It is these considerations of policy which govern our holding today.

This Court in its opinion, although affirming the conviction on both counts, chose to rest its affirmance primarily upon a discussion of the sufficiency of the substantive count. The reasons why appellant believes the conviction on the substantive count erroneous are set forth in detail later. Suffice it to say here that the affirmance on such basis is like the tail wagging the dog.

From the pleading in the indictment until the final submission of the case to the jury, the substantive count was so submerged in the mass of conspiratorial charges and proofs that it remained almost completely forgotten. The tenuous thread upon which the very foundation for the charge rests in the evidence is the subject of a later specification.

The charge to the jury even included the reading of the substantive count to the jury as an afterthought.

This Court in its opinion takes care to note the almost complete lack of instruction to the jury on this count.

The essence of this case is the conspiracy charge. Without this charge there would have been little basis for the admission of the mass of alleged acts, declarations and statements. The Court might well note that the Government has joined in the conspiracy count as unindicted co-conspirators practically every witness called in the case. Had there been any substantial basis for the allegations as to Fong Yee Shee, Benton Fong and Ruby Yee, the Court may be sure they would have been joined as defendants. They are not in the same class as Jonathan Yee and Jean Yee who undoubtedly were unnamed as defendants because of their co-operation with the Government. The obvious purpose of such joinder was to lay a foundation for parading before the jury statements and declarations made by them outside defendants presence as statements of co-conspirators. The pernicious influence of such type of testimony permeated the whole record.

As its *coup de grace,* the Government improperly introduced evidence of post-conspiracy statements and declarations made outside the presence of defendant of two of such un-indicted co-conspirators, Yee Shee and Ruby Yee, and post-conspiracy statements of defendant Fong made outside defendant's presence—all of which were made in furtherance of efforts to conceal evidence of the original conspiracy charged.

Defendant's chance of being afforded independent judgment on the substantive count uncolored and uninfluenced by the conspiratorial evidence was non-

existent. Although not legally merged in the conspiracy count, for all practical purposes such was the case.

> "This case illustrates a present drift in the federal law of conspiracy which warrants some further comment because it is characteristic of the long evolution of that elastic, sprawling and pervasive offense. Its history exemplifies the tendency of a principle to expand itself to the limit of its logic. The unavailing protest of courts against the growing habit to indict for conspiracy in lieu of prosecuting for the substantive offense itself, or in addition thereto, suggests that loose practice as to this offense constitutes a serious threat to fairness in our administration of justice." (Justice Jackson concurring, *Krulewitch v. U. S.,* 336 U.S. 440, 442.)

The introduction of the foregoing evidence by the Government on the conspiracy charge

> "poisoned the water in the reservoir, and the reservoir cannot be cleansed without first draining it of all impurity." (Chief Justice Warren in *Mesarosh v. U. S.,* 25 L.W. 4001, 4004.)

This is not a case where the record fairly "shrieks" the guilt of appellant. This Court in its opinion noted some of the circumstances consistent with appellant's innocence. The circumstances as outlined in the evidence not only hint but strongly support the inference that all of defendant Fong's planning and conspiring with Jonathan Yee for the entry of Chin Bick Wah as his No. 2 wife came to nought when Jonathan and appellant met in Hong Kong; that Jonathan liked

what he found and that appellant revelled in her new found love; that when appellant applied for her immigration visa her statements of her intentions were true in every detail; that upon arrival here Jonathan tried to keep his cake and eat it too; that appellant would have no part of it and insisted upon remarriage in Reno followed by a move of adobe to Seattle away from the detouring influence of Jonathan's first wife with whom he apparently was quite successful in dividing his attentions; that when the chips were down and Jonathan found himself with a sick child in Seattle he decided he wanted "mama" number one back; that appellant now finally and fully abandoned by Jonathan, succumbed to the blandishments of the frustrated arch-schemer Fong and became his wife, however, only after he had legally shed himself of his first wife. Such circumstances might portray appellant somewhat as an opportunist but hardly guilty of the crimes charged.

It is to avoid just such a miscarriage of justice that this petition for rehearing is being presented. This Court may be sure that wifely consideration for domestic tranquility and husband Fong's pride would not again dissuade her from taking the witness stand in her own behalf.

SUMMARY OF POINTS ON PETITION FOR REHEARING.

The rules of this Court provide that a petition for rehearing shall briefly and concisely state the points relied upon. Appellant is conversant with the reason

for the rule and is appreciative of the heavy burden of work placed upon the individual Circuit Judges in the discharge of duties incident to their regular decisions. The circumstances of the present appeal, however, are such that appellant has found it impossible to adequately present the reasons in support of the Petition for Rehearing as briefly and concisely as desired.

Because of this fact appellant is presenting the following summary of the points presented in the Petition for Rehearing. Reference to this summary will point up the precise basis for the petition. The balance of the petition might then be considered in the nature of a brief in support of the petition to provide such aid as the Court might desire in the consideration of the points herein presented.

The summary of Points is as follows:

I. The Trial Court erred in failing to instruct the jury on the essential elements of the substantive offense charged.

1. It is fatal error to omit to instruct the jury on essential elements of the offense.

2. An essential element of the crime charged in 18 USC 1546 is criminal intent.

3. The Court committed reversible error in failing to instruct the jury on criminal intent.

4. The Court erred in not giving instructions on the requirement of the materiality of the state-

ments charged to be false, an essential element of the offense.

II. Failure of proof of any of the representations charged in the 6th count of the indictment requires reversal.

III. The Court erred in refusing to give defendant's requested instruction No. 20.

IV. The Court committed prejudicial error in admitting into evidence testimony of statements and declarations of alleged co-conspirators after termination of the conspiracy.

1. Evidence was admitted of post-conspiracy statements and declarations made outside appellant's presence.

2. The admission of such statements and declarations of alleged co-conspirators constituted prejudicial error.

V. Error was committed in the pleading and proof of the conspiracy.

1. Count one of the indictment was defective in charging two conspiracies, one of which did not join appellant as a defendant.

2. Construing the indictment as charging only a single conspiracy, evidence of two conspiracies was introduced causing a variance which affected the substantial rights of appellant.

3. The Court committed error in denying appellant's motion to strike all of the evidence admitted as to incidents prior to January 1, 1950.

Some of these errors were not previously presented to this Court. They are being sincerely urged at this late date by appellant's present counsel because they are serious and substantial and affect the very foundation of the conviction. These errors are being urged under the principles enunciated by his honor, Senior Circuit Judge Albert Lee Stephens in *Morris v. United States,* 156 F.(2) 525, 527:

> "No assignment of error was made at the trial covering the claimed error, but we consider it because, as is well stated in Suhay v. United States, (10 Cir. 1938) 95 F. (2) 890, 893.
>
> ". . . Where life or liberty is involved, an appellate court may notice a serious error which is plainly prejudicial enough it was not called to the attention of the trial court in any form."

These principles were reaffirmed in the recent decision of this Circuit in *Bloch v. United States,* 221 F.(2) 786, 788, under the dictates of Rule 52(b) of the Federal Rules of Criminal Procedure providing:

> "Plain Error: Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

See also:

Screws v. United States, 325 U.S. 91, 107;
U. S. v. Atkinson, 297 U.S. 157;
U. S. v. Yabin, 159 F.(2) 705;
U. S. v. Max, 156 F.(2) 13;
U. S. v. Levy, 153 F.(2) 995;
Dash v. U. S., 221 F.(2) 237.

I.

THE TRIAL COURT ERRED IN FAILING TO INSTRUCT THE JURY ON THE ESSENTIAL ELEMENTS OF THE SUBSTANTIVE OFFENSE CHARGED.

1. It Is Fatal Error To Omit To Instruct The Jury On Essential Elements Of The Offense.

It is well settled that it is fatal error to omit to instruct the jury on the essential elements of the crime charged. This is so although no exception may have been taken to the charge given or the failure to so instruct was not assigned as error on appeal.

In *U. S. v. Max,* (CCA. 3) 156 F.(2) 13, the Circuit Court reversed because of the Trial Court's failure to give instruction on issues involved and essentials of the crime for which the defendants were tried. After the Court had charged the jury, counsel were asked if they had any exceptions and replied "No, sir." Furthermore, no exception was ever taken and the only reference to the charge in the grounds of appeal was that the verdict was contrary to the charge of the Court.

In *U. S. v. Levy,* (CCA. 3) 153 F.(2) 995 in a decision written by Judge Albert Lee Stephens the Court reversed for the Trial Courts failure to instruct the jury on the offense charged. The Court there observed that appellant made no reasonable request for pertinent instruction but that both parties agreed that in a criminal case it is a Court's duty to charge a jury on all esssential questions of law, whether requested or not.

In *Kenion v. Gill,* (CCA. D.C.) the Court noted that

> "it is reversible error for the trial court to fail to define the various crimes involved in the indictment and *to fail to define the elements of each,* to the extent necessary to permit the jury to apply the law to the facts" (Emphasis added).

In a parallel to the instant case, the Court, in *Williams v. U. S.,* (CCA. D.C.) 131 F.(2) 21, declared that

> "Upon the issues presented by the defendant we would be constrained to affirm."

The Court, however, pointed up the duty of the Court under the circumstances in the following words:

> "It is our custom, however, in cases of serious criminal offenses, to check carefully the record for error prejudicial to defendant which he did not urge . . . A basic defect of the charge is the failure to discuss and define the offenses included within the indictment . . . We have always been proud that under our law the elements which go to make up a crime are definitely established."

The principle underlying this rule has been stated by the Supreme Court as follows:

> ". . . where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our motion. Even those guilty of heinous crimes are entitled to a fair trial. Whatever the degree of guilt, those charged with a federal crime are entitled to

be tried by the standard of guilt which Congress has prescribed."

Screws v. U. S., 325 U.S. 91, 107.

2. An Essential Element Of The Crime Charged In 18 USC 1546 Is Criminal Intent.

It is not every misstatement of fact or misrepresentation that is made the basis of criminal liability under the provisions of this statute. The circumstances that make it such are:

(1) *Knowingly making* under oath

(2) a *false statement* of

(3) a *material fact* in

(4) an application required by the immigration laws or regulations prescribed thereunder.

In this case it might well be urged that there was a failure of proof that appellant made any statement of fact in an application required by the immigration laws or regulations prescribed thereunder. The sole foundation for the admission of the files containing the copies of the application for the visa was a stipulation on one occasion by defendant's counsel as to the authenticity of the papers contained in the file (Exhibit 6, Tr. 71-72) and in a second instance by a stipulation that the signature on a marriage certificate in a visa file was defendants (Exhibit 8, Tr. 8-81).

The burden of proof was on the Government to affirmatively establish the making of the statements in such application by defendant and stipulations as to authenticity and signatures on certificates of marriage

might well not satisfy such requirement. This might appear particularly as in view of the testimony of Jonathan Yee that he was not responsible for the statements that appeared on the application for his own visa but that its contents were placed thereon by Bill Fong independently and that all he did was sign it. (T. 73.)

Appellant's case, however, does not have to rest on such claim. The requirement of the statute that defendant *knowingly made* a *false statement* of a *material fact* prescribes a specific state of mind that the jury must find to exist before imposing criminal liability.

As stated in *U. S. v. Starky,* 52 F.Supp. 1, 2, (E.D. Ill.):

> "The word 'knowingly' in a criminal statute commonly means that state of mind wherein the person charged is in possession of facts under which he is aware he cannot lawfully do the act with which he is charged."

Similarly in *Ex Parte Stewart,* 47 F.Supp. 415, 417 Judge Yankwich pointed out that the use of the word "knowingly" implied wilful knowledge and a specific intent.

In considering the use of the word "falsely" in criminal statutes, the Court in *U. S. v. Achtner,* 144 F.(2) 49, 52 noted:

> "Thus, it is said that the word 'falsely', particularly in a criminal statute, suggests something more than a mere untruth and includes 'perfidiously' or 'treacherously' . . . or 'with intent to

defraud', as has been held with respect to the counterfeiting laws, . . . a construction particularly applicable here where the required lack of truth of the representation is set forth in other express language of the statute."

The Court in *U. S. v. Chicago Express,* 235 F.(2) 785, 786, 787, stated:

"By using the word 'knowingly' in Sec. 835, we think Congress, while describing a state of mind essential for responsibility, removed violations of the relevant regulations from the classifications familiarly known as offenses malum prohibitum, public welfare, and civil offenses . . ."

". . . We think therefore, it was reversible error for the trial court to refuse to give the following instruction requested by defendant:

'The Court instructs the jury that before the defendant can be found guilty, the jury must believe from the evidence that defendant had a specific wrongful intent to violate the regulations of the Interstate Commerce [Commission].' "

The Supreme Court in *Morissette v. U. S.,* 342 U.S. 246, 271 in construing 18 U.S.C. 641 as requiring criminal intent as an essential element of the offense of "knowingly" converting or stealing government property noted that the mere omission from the section of any mention of criminal intent is not to be construed as eliminating that element from the crimes defined and that the history and purposes of the section affords no ground for inferring any affirmative instruction from Congress to eliminate intent from such offenses.

In *Christensen v. U. S.,* 90 F.(2) 152, the Court pointed out that under 18 USCA 80 (Presentation of a claim knowing it to be false) criminal intent was a specific element of the offense.

See also:

U. S. v. Greenbaum, 123 F.(2) 770.

(Intent is an element under 18 U.S.C. 80.)

3. The Court Committed Reversible Error In Failing To Instruct The Jury On Criminal Intent.

This Court in its opinion of May 28th properly notes that it cannot weigh the evidence. This is the exclusive function of the jury and upon appeal review is limited to questions of law. Review of the evidence in the Appellate Court is undertaken for the sole purpose of determining the legal question whether there is any substantial evidence to support the verdict.

In reviewing the evidence in this case, however, for the purpose of making this determination, this Court points to a list of four circumstances that it found were all consistent with appellant's innocence.

After noting that "intent here must be largely circumstantial", the Court then points to four circumstances preceding March 5, 1952 and four circumstances following that date from which it states the jury might infer that appellant did not intend to "join" Jonathan Yee.

This conclusion presupposes that the evidence of these circumstances from which the *jury* might infer *intent* was properly submitted to the jury with appropriate instructions on this essential element.

The determination of this Court in its opinion that there was in the evidence a series of circumstances from which the jury could properly infer an intent consistent with innocence in itself requires reversal of the case in view of the submission of this issue to the jury for determination without instructions on this essential element.

There is no authority for the withdrawal of this determination from the jury by either the trial Court or the Appellate Court or the substitution of the judgment of the trial Court or Appellate Court for that of the jury. (See opinion of Senior Judge Albert Lee Stephens in *Morris v. U. S.*, 156 F.(2) 525, 527.)

It is not for the District Court Judge or the Appellate Court to determine from the evidence the existence of the intent with which the charged statements were made by the defendant. As held in *Morissette v. U. S.*, 342 U.S. 246, 271, where intent of the accused is an ingredient of the crime charged, in its existence is a question of fact which must be submitted to the jury for determination in the light of all relevant evidence.

In *Drassos v. U. S.* (C.C.A. 8) 16 F.(2) 833, the Court stated:

> "The statute makes intent and purpose an element of the crime. The intent and purpose is a fact and must be established to the satisfaction of the jury beyond a reasonable doubt; and being an element of the offense itself its existence or non-existence must be determined by the jury and not by the court."

In holding criminal intention a necessary element of the crime of presentation of a claim knowing it to be false under 18 U.S.C. 80, the Court in *Christeunsen v. U. S.,* 90 F.(2) 152, pointed out:

> "Appellant also assigns error because the court failed to sufficiently instruct the jury on the question of intent . . . We think the accused was entitled to a definition of the crime and to specific instructions on the subject of criminal intention. The statute defines the offense which includes the intention which was a necessary element of the offense."

The failure of the trial Court to instruct the jury on the requirement of criminal intent was tantamount to a direction that intent was not an element of the offense and constitutes prejudicial error requiring reversal.

Morissette v. U. S., 342 U.S. 246, 271.

4. The Court Erred In Not Giving Instructions On The Requirement Of The Materiality Of The Statements Charged To Be False, An Essential Element Of The Offense.

18 U.S.C. 1546 requires that the false statement be to a material fact to constitute a crime. The jury was given this charge without any instruction whatsoever to guide them in determining the materiality of the statements charged to be false. Title 8 U.S.C. 1202, prescribes the information and data to be required in such visa applications by law. However, no reference whatsoever was anywhere made in the charge to the jury of such statutory requirements or to such requirements that might be established by appropriate regulation.

The issue of the materiality of the statements was thus effectively withdrawn from the consideration of the jury and they were in substance directed that the false statements were as a matter of law material.

In this respect, it might well be noted that the applicable statute, 8 U.S.C. 1202, which was entirely ignored in the Court's charge to the jury provides as follows:

> "(a) Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application, the immigrant shall state . . . final destination, if any, beyond port of entry; *whether he has a ticket through to such final destination;* . . ."

Yet defendant is charged with knowingly making a false statement as to a material fact in an application required by the immigration laws in stating "that her passage was paid for by Jonathan Yee"—a supplementary fact which the statute itself does not require or apparently regard as material.

Certainly it was error for the Court not to instruct the jury on the applicable law relating to the materiality of the false statements in view of the express provision of the law as to this element.

II.

FAILURE OF PROOF ON ANY OF THE REPRESENTATIONS CHARGED IN THE 6TH COUNT REQUIRES REVERSAL.

This Court in its opinion notes that there was a failure of proof that Chin Bick Wah knew that Jonathan Yee did not pay for her ticket from Hong Kong to San Francisco. The Court further indicated doubt about the falsity of the statement of appellant that she was married to Yee. However, the Court finds the conviction supportable on the representation that she intended to "join" Yee in the United States.

This holding is in conflict with that of the Supreme Court in *Warszower v. U. S.*, 312 U.S. 344. The Court there states:

> "The prosecution had the burden of proving that the passport was obtained by the use of false statements. As the trial court instructed the jury, it might convict if any one of the statements charged in the indictment to be false was found false, *it is necessary before affirmance to decide whether there was adequate evidence to support the charge of falsity as to each of the statements.*" (Emphasis added.)

A similar question was before the Supreme Court in the recent appeal from the Ninth Circuit in *Yates v. U. S.*, decided June 17, 1957, 25 LW 4475, 4478. The Court there stated:

> "The Government contends that even if the trial court was mistaken in its construction of the statute, the error was harmless because the conspiracy charge embraced both 'advocacy' of

violent overthrow and 'organizing' the Communist Party, and the jury was instructed that in order to convict it must find a conspiracy extending to both objectives. Hence, the argument is, the jury must in any event be taken to have found petitioners guilty of conspiring to advocate, and the convictions are supportable on that basis alone. We cannot accept that proportion for a number of reasons. The portions of the trial court's instructions relied on by the Government are not sufficiently clear or specific to warrant our drawing the inference that the jury understood it must find an agreement extended to both 'advocacy' and 'organizing' in order to convict . . . In these circumstances, we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which the jury selected."

See also:

Brunewald v. U. S., 1 L.Ed.(2) 931.

III.

THE TRIAL COURT ERRED IN REFUSING TO GIVE DEFENDANT'S REQUESTED INSTRUCTION NO. 20.

Defendant proposed the following instruction No. 20:

"If you find that the defendant, Chin Bick Wah, intended to enter into the marriage relationship with Jonathan Yee in Hong Kong and

did, in fact, do so, then you must find the defendant, Chin Bick Wah, not guilty."

This proposed instruction certainly covered the substance of the charge in the 6th count that defendant knowingly made false statements that she was married to Yee and intended to join him in the United States.

The Court gave as part of its charge an instruction that where "neither of the parties intend to enter into the marriage relationship, as it is commonly understood, and two persons enter into a marriage solely for the purpose of facilitating an alien's entry into this country, the alien spouse is not entitled to enter the United States pursuant to the immigration laws of the Untied States." (T. 576.)

To be contrasted with the instruction given and Defendant's 20 which was refused, are the instructions given in *Lutwak v. U. S.*, 344 U.S. 604.

The instructions given are not discussed in the Supreme Court opinion but reference to them is found in the report of the decision of the Circuit Court in 195 F.(2) 748, 754:

> "In the present case the Court charged the jury fully and correctly as to the law, substantially in the words quoted from U.S. v. Rubenstein, supra, and advised the jurors that it was a question of fact for them to determine from the evidence whether at the times the aliens entered the United States the respective parties were in fact married and were entering as man and wife, and that in

determining the question, they should bear in mind the legal principles mentioned."

Defendant's requested instruction 20 was the only instruction bearing upon the legal effect of a necessary fact to be determined by the jury, the intent of Chin Bick Wah in entering into the marriage relationship with Yee in Hong Kong.

This issue was submitted to the jury with only the general instruction noted above and which was included as a part of the series of instructions on the conspiracy count rather than the substantive count. (T. 576.)

In refusing to give defendant's requested instruction 20, the Court committed prejudicial error. Defendant's counsel properly noted an exception to the Court's failure to give this instruction. (T. 591.)

IV.

THE COURT COMMITTED PREJUDICIAL ERROR IN ADMITTING INTO EVIDENCE TESTIMONY OF STATEMENTS AND DECLARATIONS OF ALLEGED CO-CONSPIRATORS AFTER THE TERMINATION OF THE CONSPIRACY.

1. Evidence Was Admitted Of Post-Conspiracy Statements And Declarations Made Outside Appellant's Presence.

The trial Court in this case admitted into evidence a series of declarations and statements of co-conspirators made outside the presence of appellant in the last part of 1955 and in April of 1956, just 4 or 5 days prior to the return of the indictment. The state-

ments and declarations were all made in the course of efforts to discourage disclosure of the past events to Government investigators or the grand jury.

The occasions on which such post-conspiracy statements and declarations of alleged co-conspirators outside appellant's presence were admitted were as follows:

1. Jean Yee, an admitted co-conspirator, was permitted to testify concerning statements and declarations of alleged co-conspirator Fong Yee Shee made around Christmas of 1955. (T. 442.)

2. Testimony of Jean Yee concerning a telephone call about 1:30 p. m. of April 4, 1956 from alleged co-conspirator Ruby Yee. (T. 443.)

3. Testimony of Jean Yee concerning a meeting on the afternoon of April 4, 1956 with defendant Fong and alleged co-conspirator Yee Shee and the statements and declarations of each. (T. 445.)

4. Testimony of Jean Yee concerning a telephone call about 10:30 p.m. on April 5, 1956 from defendant Fong and alleged co-conspirator Yee Shee. (T. 453-454.)

5. Testimony of Jean Yee concerning a telephone call at 5:30 a.m. on April 6, 1956 from alleged co-conspirator Yee Shee. (T. 454.)

6. Testimony of Francis Leo, concerning the meeting at 3 p.m., April 4, 1956, and the statements and declarations of defendant Fong and alleged co-conspirators Yee Shee and Jean Yee.

7. Testimony of E. T. Prather concerning the meeting at 3 p.m., April 4, 1956 and the state-

ments and declarations of co-defendant Fong and alleged co-conspirators Yee Shee and Jean Yee.

8. Testimony of Jonathan Yee concerning statements and declarations of alleged co-conspirator Fong Yee Shee on April 5, 1956. (T. 112.)

9. Testimony of Jonathan Yee concerning statements and declarations of alleged co-conspirator Fong Yee Shee on April 6, 1956. (T. 116-117.)

2. The Admission Into Evidence Of Such Statements And Declarations Of Alleged Co-conspirators Constituted Prejudicial Error.

The inadmissibility of statements and declarations of co-conspirators outside the presence of defendants and after the termination of the conspiracy is well recognized.

Krulewitch v. United States, 336 U.S. 440; and *Lutwak v. United States,* 344 U.S. 604.

The Government, however, in this case claimed throughout the trial that evidence of statements of alleged co-conspirators up until the return of the indictment were admissible against all defendants as acts and declarations in furtherance of the conspiracy on the ground that a conspiracy to conceal was expressly alleged as one of the crimes charged in count 1 of the indictment together with the specification of an overt act of concealment in furtherance of the conspiracy.

Grunewald v. United States (May 27, 1957) 1 L. Ed. (2) 931, 940-944, finally lays to rest the contention

upon which the Government in this case claimed such evidence was admissible.

The Supreme Court in that case noted:

> "The Government urges us to distinguish *Krulewitch* and *Lutwak* on the ground that in those cases the attempt was to *imply* a conspiracy to conceal from the mere fact that the main conspiracy was kept secret and that overt acts of concealment occurred. In contrast, says the Government, here there was an actual agreement to conceal the conspirators, which was charged and proved to be an express part of the initial conspiracy itself."

In rejecting this contention, the Supreme Court points out:

> "A reading of the record before us reveals that on the facts of this case the distinction between 'actual' and 'implied' conspiracies to conceal, as urged upon us by the Government is no more than a verbal tour de force."

The Court added:

> "We find in all this nothing more than what was involved in *Krulewitch,* that is, (1) a criminal conspiracy which is carried out in secrecy; (2) a continuation of the secrecy after the accomplishment of the crime; and (3) desperate attempts to cover up after the crime begins to come to light; and so we cannot agree that this case does not fall within the ban of prior opinions."

The considerations prompting the Supreme Court to this conclusion were cogently stated:

"Prior cases in this Court have repeatedly warned that we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions. (Citing *Delli Paoli v. United States,* 352 U.S. 232; *Lutwak v. United States,* supra; *Krulewitch v. United States,* supra; *Bollenbach v. United States,* 326 U.S. 607.) The important considerations of policy behind such warnings need not be again detailed. See Jackson, J., concurring in *Krulewitch v. United States,* supra. It is these considerations of policy which govern our holding today. As this case was tried, we have before us a typical example of a situation where the Government, faced by the bar of the three-year statute, is attempting to open the very floodgates against which *Krulewitch* warned. We cannot accede to the proposition that the duration of a conspiracy can be indefinitely lengthened merely because the conspiracy is kept a secret, and merely because the conspirators take steps to bury their traces, in order to avoid detection and punishment after the central criminal purpose has been accomplished."

Under the ruling of the *Krulewitch* case, reaffirmed by the Supreme Court in *Grunewald v. U.S.,* supra, it is prejudicial error to admit under any circumstances evidence of statements and declarations made after the termination of the conspiracy by co-conspirators not charged as defendants. The admission of testimony of the statements and declarations of alleged co-conspirators Yee Shee and Ruby Yee, (1), (2), (5), (8), and (9) listed above, is directly contrary

to the holding of this case and thus constituted prejudicial error.

The Supreme Court in *Paoli v. United States* (Jan. 14, 1957) 352 U.S. ....., 1 L. Ed. (2) 278, 284, had before it the correlary problem as to the admissibility in a conspiracy case of a confession made after the termination of the conspiracy by a *co-defendant* who was then on trial. The ruling of that case would apply to the statements and declarations of defendant Fong and those made in his presence of the alleged co-conspirators Jean Yee and Yee Shee, (3) (4) (6) and (7), listed above.

The Court in the *Paoli* case stated the issue under such circumstances as follows:

> "The issue here is whether, under all the circumstances, the court's instructions to the jury provided petitioner with sufficient protection so that the admission of Whitley's confession, strictly limited to use against Whitley, constituted reversible error. The determination of this issue turns on whether the instructions were sufficiently clear and whether it was reasonably possible for the jury to follow them."

The applicable rule in such cases was stated in *Lutwak v. U.S.,* 344 U.S. 604, 617-619 as follows:

> "Relevant declarations or admissions of a conspirator made in the absence of the co-conspirator, and not in furtherance of the conspiracy, may be admissible in a trial for conspiracy as against the declarant to prove the declarant's participation therein. *The court must be careful at the*

time of the admission and by its instructions to make it clear that the evidence is limited as against the declarant only . . .

". . . These declarations [i.e., those admissible only as to the declarant] *must be carefully and clearly limited by the court at the time of their admission* and the jury instructed as to such declarations and the limitations put upon them." (Emphasis added).

The testimony of Jean Yee concerning the meeting on the afternoon of April 4, 1956 with defendant Fong and alleged co-conspirator Yee Shee and the statements and declarations made embraced practically every facet of the alleged conspiracy. Her account of the statements and declarations made extends through pages 446-452 of the printed transcript. There can be no question but that the statements and declarations were highly incriminating not only as to the persons present but appellant also.

This highly prejudicial testimony was admitted to the jury without a limiting instruction of any kind. After co-defendant Levy had interposed an objection to the admission of this testimony, the record shows the following occurred:

"Mr. Schnake. Your Honor, we have the memorandum of law which we just finished this morning.

The Court. It is too late to give it to me now, counsel. The objection may be overruled. I don't want to see it. I should have had it before.

Mr. Schnake. We were just able to finish it a few minutes ago, your Honor, and I would like to file it at this time relating to some other matter that will come up.

The Court. The objection is overruled."

A review of the record discloses that the trial Court was in some confusion as to the rules relating to the admissibility of statements and declarations not in furtherance of the conspiracy.

The Court's rulings were not consistent. In the course of passing upon the admissibility of the post-conspiracy declarations and statements heretofore set out, the Court made 3 classes of rulings:

(1) The objections were summarily overruled and the declarations and statements admitted without limitation of any kind (T. 442, 445 and 454);

(2) The objections were overruled but the admission of the evidence limited "solely for the purpose of proving, if it does prove, the existence of a conspiracy." (T. 444, 453);

(3) The objections were overruled but the admission of the evidence limited to a declaration of the person making it except for such weight as it may have to prove the existence of the conspiracy (T. 518, 531, 113-114, 116.)

The rulings reflect an attempt to draw a distinction between admitting the statements as declarations against interest and as proof of the existence of the

conspiracy. Careful examination of the record discloses that at no juncture of the proceedings did the Court observe the mandate of the Supreme Court in the *Paoli* and *Lutwak* cases that such statements and declarations "must be carefully and clearly limited by the Court *at the time of their admission*" to avoid prejudicial error.

The error in this case was not of the admission of a single post-conspiracy declaration of a defendant as in the *Lutwak* case. The error in this case extended to a series of such post-conspiracy declarations, many merely by co-conspirators not joined as co-defendants. The post-conspiracy declarations of defendant Fong and co-conspirators Yee Shee and Jean Yee were not the subject of testimony only once but three times. Jean Yee's account of these declarations appears on pages 446-452 of the transcript. Francis Leo, an interpreter for the Immigration Service, testified from notes made by him at the time of both the English and Chinese portions of the declarations. (T. 519-529.) Agent Prather testified as to the portions of the declarations in English from notes made by him at the time. (T. 532-538.)

The Court thus not only committed prejudicial error in admitting the post-conspiracy declarations of co-conspirators who were not defendants in violation of the rule of the *Krulewitch* case but committed prejudicial error in admitting the post-conspiracy declarations of Fong and alleged co-conspirators outside the

presence of appellant without carefully and clearly limiting such declarations at the time of admission to the declarants.

V.

ERROR WAS COMMITTED IN THE PLEADING AND PROOF OF THE CONSPIRACY.

1. Count 1 Of The Indictment Was Defective In Charging Two Conspiracies, One Of Which Did Not Join Appellant As A Defendant.

Count 1 of the Indictment commences on page 3 of the Transcript and continues for 10 pages through page 12 of the transcript. The indictment is not reprinted herein but appellant respectfully requests the Court to again review at this time this portion of the indictment.

Appellant submits that this portion of the indictment is such a hodge podge of crimes charged, statement of evidentiary matters intended to be proven and legal verbiage as to be practically unintelligible.

Reference to the instructions proffered by the prosecution and the charge given by the Court discloses the conspiracy count to be characterized as follows:

> "In essence, the first count of this indictment charges that the defendant Robert Leonard Levy and Chin Bick Wah conspired with other named defendants and co-conspirators to violate the laws of and to defraud the United States by effecting or assisting the entry into the United States of the person of Chin Bick Wah." (T. 576.)

Yet stripping the redundance, statements of evidentiary matter, legal conclusions and verbiage from Count 1 discloses that it is reasonably susceptible of construction charging *two* conspiracies, not one.

The skeleton of the indictment is in the following form:

"First Count: (18 U.S.C. 371.)

The Grand Jury charges that:

1. Commencing on or about January 1, 1950 and continuously thereafter up to and including the date of the return of the indictment . . . William Fong, . . . Chin Bick Wah . . . and Robert Leonard Levy did . . . conspire . . . and agree with each other [and others] . . .,

(A) To commit offenses against the United States . . . and

(B) To defraud the United States . . .

2. In the year 1939 Fong Wy Sum and his mother Fong Yee Shee conspired and agreed with Jonathan K. Yee, a Chinese alien, to assist him in effecting an illegal entry into the United States by purchasing for Jonathan K. Yee a fictitious identity as a derivative citizen of the United States. In consideration thereof Jonathan K. Yee agreed to pay to Fong Wy Sum the amount of $2,000.00 for the purchase of the fictitious identity and the expenses of passage to the United States. Pursuant to the agreement Jonathan K. Yee entered the United States on December 24, 1939, under the fictitious identity of Yee Yuen Foon, and in the years thereafter paid Fong Wy

Sum amounts in excess of $2,000.00, as demanded by Fong Wy Sum."

Appellant was named neither as a co-defendant nor co-conspirator in the latter conspiracy. Although the case was submitted to the jury on the premise that the indictment charged only one conspiracy the first count of the indictment, with the exception of the overt acts, was read in its entirety to the jury and the jury was given the indictment itself upon retiring.

Furthermore the transcript of the record of the trial is replete with evidence relating to the conspiracy charged against Fong, his mother and Jonathan Yee to effect his illegal entry and appellant's alleged knowledge of this conspiracy.

Any conviction of appellant as a party to the latter conspiracy would obviously be a miscarriage of justice. Yet in the face of the record presented by the prosecution, it is impossible to now determine what theory of the case was adopted by the jury. Under this posture of the case, the judgment should be reversed.

Yates v. U.S. (June 17, 1957), 25 LW 4475, 4478;

Grunewald v. U.S. (May 27, 1957), 1 L. Ed. (2) 931.

2. Construing The Indictment As Charging Only A Single Conspiracy, Evidence Of Two Conspiracies Was Introduced Causing A Variance Which Affected The Substantial Rights Of Appellant.

Much of the testimony in this case related to Jonathan Yee's illegal entry into the United States through the efforts and agreement of Fong, Yee Shee and one Yee Hing Bow (Yee's paper father) and the knowledge of this fact by others, including appellant. This evidence was run in and out of the courtroom by the prosecution from the reading of the indictment to the final charge submitting the cause to the jury.

The first questions asked the first witness, Jonathan Yee, related to this charge (T. 27, 29, 36, 37.) The guise under which the evidence was first introduced was that it bore on a material fact, whether Yee was an American citizen as alleged in his passport application and secondly, that it showed the circumstances under which he was induced to enter the conspiracy. (T. 26-27.) The questioning of witnesses concerning their present knowledge of Yee Hing Bow's whereabouts (T. 155); the fact that he had recently disappeared (T. 155); whether Immigration officers had questioned the witness concerning his present whereabouts (T. 155); and the questioning of Immigration officers concerning the search of the Immigration Service for such person and his obvious flight and concealment (T. 267), however, soon made it manifest that the reasons advanced for admitting the evidence were merely a pretense for the insinuation of guilt by association.

The damning and highly prejudicial effect of such testimony on the minds of the jury as to all concerned, including appellant, cannot be seriously controverted. This error permeated the whole trial from beginning to end, invading even the instructions to the jury included as it was in the recital of the charge of the grand jury read to the jury by the Court. (T. 562-563.)

The introduction of proof of a conspiracy separate from that with which appellant was charged constituted an erroneous variance of proof.

> *Kotteakos v. United States,* 328 U.S. 750, 755-756.

The only question here is whether the variance was such as to be fatal.

The test whether such variance is fatal has been set forth in *Kotteakos v. U.S.,* 328 U.S. 750, 764-765, as follows:

> "If, when all is said and done, the conviction is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand, except where the departure is from a constitutional norm or a specific command of Congress . . . But if one cannot say with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so

whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand."

3. The Court Committed Error In Denying Appellant's Motion To Strike As To Her, All Of The Evidence Admitted As To Incidents Prior To January 1, 1950.

Appellant's counsel made a motion at the conclusion of the Government's case to strike all evidence admitted of any incidents prior to January 1, 1950, on the specific ground of its prejudicial nature because charging a prior offense and did not tend to prove the subsequent formation of a conspiracy.

This motion was made in accordance with the announcement of the Court at the outset of the trial in response to an objection by co-defendant Levy's counsel to such evidence. The Court at that time declared:

> "Well, unless the evidence is connected up with the defendant, Levy, it may be stricken. At the moment I can't tell whether it will or will not be. It may be admitted subject to a motion to strike, counsel, if it isn't connected up with the defendant Levy." (T. 27.)

Appellant's counsel made no independent objection on this ground at the time but the Court's position on the issue was clearly defined and the absence of such separate objection should afford no reason for not extending the same right to move to strike to appellant.

Although the record is totally devoid of any evidence connecting appellant with the conspiracy in 1939 to effect Jonathan Yee's illegal entry or in the events

which intervened from this date and the time of the commencement of the conspiracy charged in January 1, 1950, the Court denied appellant's motion. (T. 548.)

CONCLUSION.

Appellant respectfully submits that for the foregoing reasons a rehearing should be granted to correct plain and serious errors of law adversely and prejudicially affecting appellant's rights and to avoid a miscarriage of justice.

Dated, Sacramento, California,
July 10, 1957.

Respectfully submitted,
JAMES T. DAVIS,
THOMAS W. MARTIN,
Attorneys for Appellant.

CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for Joseph Boyd, appellant and petitioner in the above cause and that in my judgment the foregoing Petition for a Rehearing is well founded in point of law a swell as in fact and that said Petition for Rehearing is not interposed for delay.

Dated, San Francisco, California,
July 7, 1957.

THOMAS W. MARTIN,
Counsel for Appellant and Petitioner.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
I-134

AFFIDAVIT OF SUPPORT

(For Use in Connection with Issuance of Immigration Visa)

TO THE APPLICANT: This form should be typewritten or printed legibly with pen and ink, in duplicate. Take or mail the completed form to:

Immigration and Naturalization Service.

.....,

I, WILLIAM W. FONG (Name) Residing at 935 Stockton Street (Street and number)

San Francisco, California (City) (State) (Country)

being duly sworn depose and say:

1. [Fill in either (a), (b), or (c), whichever is appropriate]

(a) That I was born a citizen of the United States on October 18, 1906 (Month) (Day) (Year), at Gong Mee Village, Toyshan District, Kwangtung Province, China (City or town) (County) (State) (Country)

(b) That I was naturalized a citizen of the United States on ..... (Month) (Day) (Year), at ..... (City or town) ....., ..., by the ..... court and was issued Certificate No. ..... (County) (State)

(c) That I am not a citizen of the United States but that I was lawfully admitted to the United States for permanent residence on ....., at ....., on the ..... (Month) (Day) (Year) (Port) (Name of vessel or other means of conveyance)

2. That I am 45 years of age and have resided in the United States since June 1, 1915

3. That it is my intention and desire to have the following person(s) at present residing at 87 Fa Yuen Street Kowloon, Hong Kong come to the United States.

NAME OF PROSPECTIVE IMMIGRANTS	SEX	AGE	COUNTRY OF BIRTH	MARRIED OR SINGLE	RELATIONSHIP TO DEPONENT
CHIN BICK WAH	F	32	China	married	wife of employee

4. (a) That I am employed as, or engaged in the business of dairy products distributor with FONG BROS. (Name of concern) at 935 Stockton Street (Address) and derive a net annual income of $ 6,62..14 (b) That I have on deposit in savings banks in this country $ 315.91 (c) That I have other personal property, the reasonable value of which is $ 3,000.00 (d) That I have stocks and bonds in the amount of $ ....., market value, as indicated on attached list which I certify to be true and correct to the best of my knowledge and belief. (e) That I own real estate at 1041 Washington St. etc., valued at $ 60,500.00 with mortgages or other encumbrances thereon amounting to $ 23,870.00 (f) That I have life insurance in the sum of $ 26,500.00 cash surrender value of $ 3,301.81 (g) That if self-employed, I attach a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief.

(See reverse side for nature of evidence of net worth to be submitted)

16 [illegible] 3

5. That the following persons are dependent upon me for support:

Name of Person Wholly Dependent	Name of Person Partially Dependent	Age	Relationship to Me
GEE KING YIP		42	wife
YEE SHEE FONG		70	mother

6. (To be filled in, if appropriate.)

That I have previously submitted affidavit(s) of support for the following person(s):

Name	*Date submitted*

7. (To be filled in, if appropriate.)

That I have submitted petition(s) for issuance of immigration visa on behalf of the following person(s):

Name	*Relationship*	*Date submitted*

8. That I am willing and able to receive, maintain, and support the prospective immigrants listed in item 3 above. That I am ready and willing to deposit a bond, if necessary, with the United States immigration authorities to guarantee that such prospective immigrants will not become public charges during their stay in the United States.

9. That this affidavit is made by me for the purpose of assisting the American consul and the immigration and naturalization service in determining that the above-named persons are not persons who will become public charges in the event they are admitted to the United States.

William K. Yong
(Signature of deponent)

Subscribed and Sworn to Before Me This

17 day of August A. D. 19 31

at San Francisco, California

(Signature of officer)

NOTARY PUBLIC
In and for the City and County of San Francisco
State of California
(Title of officer)

My Commission Expires February 8, 1933.

Nature of Evidence of Net Worth To Be Submitted. The deponent must submit in duplicate evidence of net worth as follows:
1. Statement from an officer of the bank, postal or other financial institution in which you have deposits giving the following details regarding your bank account: (1) Date account opened; (2) Total amount deposited for past year; (3) Present balance.
2. Statement of employer, preferably on his business stationery showing: (1) Date and nature of employment; (2) Salary paid; (3) Whether employment permanent or permanent.
3. If self-employed: (1) Copy of last income tax return filed or (2) report of commercial rating concern.
4. Each outstanding serial number and denomination of bonds and name of owner.

Immigration and Naturalization Service
(Rev. 10-11-50)

PETITION FOR ISSUANCE OF IMMIGRATION VISA

IMPORTANT.—Do not use this form unless you are a United States citizen and are petitioning for your wife, husband, unmarried children under 21 years of age, or parent. See instruction No. 4 on page 5 for cases in which petitions cannot be approved. The form must be typewritten or printed legibly with pen and ink, in duplicate. You must answer ALL of the numbered questions and all other questions which may be applicable, except that a person petitioning only for a parent or parents need not answer question No. 12.

87 FA YUEN ST Ge.R. Kowloon

WP 13-646

IMMIGRATION AND NATURALIZATION SERVICE;

I, YEE YUEN FOON aka JONATHAN K YEE, residing at 935 Stockton, San Francisco, California,
(Full name; if married woman, also show maiden name) (Street and number) (City) (State)

am a citizen of the United States and request the Commissioner of Immigration and Naturalization to approve my petition for issuance of immigration visa for the person(s) named below and to notify the Secretary of State of the status of such person(s).

1. The name(s) of the prospective immigrant(s) for whom I petition is/are: [See instruction No. 9(f).]

	Full name	*Relationship*	*Marital status*	*Birthplace*	*Birth date*	*Race*
(1)	CHIN BICK WAH	Wife	married	Gin Gong Vil	CR 7-12-7	Chinese
(2)				Toyshan Dist	(Jan 8, 1919)	
(3)						

Please write in Chinese name and address of wife in Hongkong: 陳碧華 住香港九龍打鼓嶺87號1樓

2. Exact present address of prospective immigrant(s) ____
(Street) (City) (Province) (Country)

3. Location of American consulate at which they will apply for visa(s) Hong Kong

4. The prospective immigrants has not at any time been in the United States. (If ever in the United States, give information requested below):
(Have) (Have not)

Name	*Alien Registration No.*	*Place of entry*	*Date of entry*	*Date of Departure*

5. I acquired United States citizenship (Check appropriate box below):

☐ By birth in the United States. [If you check this block, be sure to attach your birth certificate. If your birth was not recorded, see instruction No. 9(a).]

☐ Through my naturalization by UNITED STATES IMMIGRATION on Feb 21 1941
(Court) (Month) (Day) (Year)

at SAN FRANCISCO CALIFORNIA Certificate of Naturalization No. 8141 2 [See instruction
(City) (State)

9(d) as to cases in which naturalization certificates must be submitted.]

☐ Through the naturalization or citizenship of my father, YEE HING BOW
(Father) (Mother) (Husband) (Former husband)

NOTE.—If you have been issued a certificate of citizenship by the Immigration and Naturalization Service in your own name, show the number here: C/I No. 8191 2 S.F. 2/21/41 If you do not have such a certificate, be sure to attach the required documentary evidence [see instructions Nos. 9(b), 9(c), and 9(d) and answer items (a) and (b) below]. If you claim citizenship through the naturalization or citizenship of a husband or former husband, you must also answer item (c).

(a) My entry into the United States on which I base my citizenship was at Los Angeles, Calif on December 24, 1939
(Port of entry) (Month) (Day) (Year)

on the President Taft
(Name of vessel or other means of conveyance)

(b) The person through whom I acquired citizenship has been absent from the United States since his acquisition
(Has) (Has not)

of citizenship. (If absent, give facts below):

CHINA from ____ to ____
(Country visited) (Month) (Day) (Year) (Month) (Day) (Year)

____ from ____ to ____
(Country visited) (Month) (Day) (Year) (Month) (Day) (Year)

(If absent over 2 years): He or she reentered the United States at ____ on ____
(Port of entry) (Month) (Day) (Year)

on the ____
(Name of vessel or other means of conveyance)

(c) The name of my husband or former husband through whom I claim citizenship is ____

I was married to him on ____
(Month) (Day) (Year)

at ____ He was born on ____
(City) (State) (Country) (Month) (Day) (Year)

at ____ He ____ naturalized by ____
(City) (State) (Country) (Was) (Was not) (Court)

on ____ at ____, Certificate of Naturalization
(Month) (Day) (Year) (City) (State)

No. ____ I ____ married before my marriage to him. He ____ married
(Was) (Was not) (Was) (Was not)

before his marriage to me.

6. I was born on July 15, 1923 (CR 12-1-2) at Oong Mee Village, Toyshan District, Kwangtung, China
(Month) (Day) (Year) (City) (State) (Country)

7. My father YEE HING BOW was born on KS 22-9-15 at Oong Mee Village,
(Full name) (Month) (Day) (Year) (City)

16—52445-4

(1) Examined: H. L. Henderson
Legal Examiner

Toyshan District, China (State) (Country) and resided in the United States from August 21, 1914 to PRESENT. He WAS (Was) (Was not) naturalized in the United States. (If naturalized): His naturalization occurred on August 21, 1914 (Month) (Day) (Year) by UNITED STATES IMMIGRATION (Court) at SAN FRANCISCO (City) CALIFORNIA (State) Certificate of Naturalization No. ..... (If your father was a citizen): He ..... (Did) (Did not) lose his United States citizenship. (If citizenship was lost): He became expatriated on ..... (Month) (Day) (Year) by ..... (Show manner in which citizenship was lost)

8. My mother WONG SHEE (Full name, including maiden name) was born on KS 22-12-1 (1896) (Month) (Day) (Year) at CAICN (City) CAICN (State) CHINA (Country) and resided in the United States from ..... to ..... She ..... (Was) (Was not) naturalized in the United States. (If naturalized): Her naturalization occurred on ..... (Month) (Day) (Year) by ..... (Court) at ..... (City) (State) Certificate of Naturalization No. ..... (If your mother was a citizen): She ..... (Did) (Did not) lose her United States citizenship. (If citizenship was lost): She became expatriated on ..... (Month) (Day) (Year) by ..... (Show manner in which citizenship was lost)

9. My parents were legally married on UNKNOWN (Month) (Day) (Year) at TOYSHAN (City) CAICN (State) CHINA (Country)

10. Since the date upon which I became a citizen of the United States, I:
(a) have not (Have) (Have not) obtained naturalization in a foreign state either upon my own application or through the naturalization of a parent;
(b) have not (Have) (Have not) taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state;
(c) have not (Have) (Have not) entered or served in the armed forces of a foreign state;
(d) have not (Have) (Have not) accepted or performed the duties of any office or employment under the government of a foreign state or political subdivision thereof;
(e) have not (Have) (Have not) voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory;
(f) have not (Have) (Have not) made a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state;
(g) have not (Have) (Have not) been convicted by a court martial for desertion from the military or naval service of the United States in time of war;
(h) have not (Have) (Have not) been convicted by a court martial or by a court of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States;
(i) have not (Have) (Have not) made in the United States a formal written renunciation of nationality; and
(j) have not (Have) (Have not) departed from or remained outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.
If you answer "Have" to any item above [(a) to (j), inclusive], answer the following question:
The only act or acts above mentioned which I have performed is (are) as follows: .....
(Show the act or acts, the date or dates, and the country in which the act was performed)

11. Since the date upon which I became a citizen of the United States, I ....have not.... (Have) (Have not) been absent from the United States. (If absent, give facts below): (a)12-1-2)
CHINA (Country visited) from July 15 1923 (Month) (Day) (Year) to FEB. 21 1941 (Month) (Day) (Year)
HONG KONG (Country visited) from OCT. 29. 1951 (Month) (Day) (Year) to PRESENT (Month) (Day) (Year)
(If absent over 2 years): I reentered the United States at ..... (Port of entry) on ..... (Month) (Day) (Year) on the ..... (Name of vessel or other means of conveyance) in possession of United States passport No. 521965

12. (To be answered if you are petitioning for your wife or husband or unmarried minor children—See instruction No. 9(e).)
I married my wife (Wife) (Husband) on Nov. 29, 1951 (Month) (Day) (Year) at HONG KONG REGISTER OF MARRIAGE (City) (State) (Country) by Civil (Civil) (Church) (Proxy) (Common law) ceremony or marriage. I was (Was) (Was not) previously married. (If previously married, submit documentary evidence of the termination of your prior marriages and give following information concerning each of your former marriages):

Name of spouse	Date of marriage	Date terminated	How terminated
JEAN JOY YEE	September 8, 1947	May 11, 1951	Divorce

My wife (Wife) (Husband) is of the Chinese race. He/She was not (Was) (Was not) previously married. (If spouse (previously married), submit documentary evidence of the termination of his/her marriages and give following information regarding each of such former marriages):

Name of spouse	Date of marriage	Date terminated	How terminated

affidavit of support. You must submit with your petition documentary evidence, in duplicate, of your

5 years have been employed by FONG BROS. (Employer)

Street, San Francisco, California My annual income is $ 2,52.61
(number) (City) (State)

for the past ____ years has been employed by ____ (Employer)

____ His/Her annual income is $ ____
(number) (City) (State)

I/We own real estate valued at $ ____, with mortgage or other encumbrances

____ I/We have on deposit in banks in this country $ ____ I/We have other personal

value of $ ____ I/We have stocks and bonds in the amount of $ ____, market value, as

indicated on attached list which I certify to be true to the best of my knowledge and belief. The following persons are dependent upon me for support:

Name—Wholly dependent	*Name—Partially dependent*	*Relationship*	*Age*
CHIN BICK WAH		Wife	32
Jo Anne Yee		daughter	3

Service No. 2337-1

Fee ____

I am able to and will support the immigrant(s) for whom I petition, if necessary, to prevent such immigrant(s) from becoming a public charge. I do swear that I know the contents of this petition signed by me and that the statements therein are true and correct.

NOTE.—If you and/or your witnesses are outside the United States, your statements must be sworn to before an American consular officer.

Yee Yuen Foon aka Jonathan K Yee
YEE YUEN FOON aka JONATHAN K. YEE (Petitioner's Registration No. 7)

Subscribed and sworn to before me this 5th day of December A. D. 19 51, at Hong Kong

[SEAL] My commission ex Margaret Bussman M. Bussman Vice Consul
(Signature of officer administering oath) (Title)

AMERICAN FOREIGN SERVICE $20 FEE STAMP

You must have the aff pleted, signed, and sworn to by two witnesses. Witnesses must be citizens of the United States, 21 years of age or over, and rn you personally for at least 1 year last past. Your witnesses MUST NOT make their affidavits until after you have signed petition. Do not delete any part of the affidavits of the witnesses.

AFFIDAVITS OF WITNESSES

I, WILLIAM W. FONG (Full name of witness), being duly sworn, depose and say that I reside at 935 Stockton Street, San Francisco, California (Street and number) (City) (State) (Country); that I am 45 years of age; that I am a citizen of the United States, having been:

(a) Born in the United States at Gon Mee Village, Toysban Dist. China on October 18, 1906 (City) (State) (Country) (Month) (Day) (Year), (or)

(b) naturalized on Certificate of Citizenship No. AA-18465 issued January 16, 1950 at Washington, D. C. (Month) (Day) (Year) by (Court) at (City) (State), Certificate No. ;

that for 10 years last past I have personally known the petitioner herein; that I have been in contact with the petitioner during the year last past under the following circumstances Petitioner is an employee - see him daily

; that the petitioner is a responsible individual able to support the prospective immigrant(s) in whose behalf the petition has been executed; and that the statements made in the foregoing petition are true and correct to the best of my knowledge and belief.

WILLIAM W. FONG (Signature of first witness)

Subscribed and sworn to before me this 11 day of [illegible], A. D. 19 51 at San Francisco, California

[SEAL] My Commission expires [illegible] (Signature of officer administering oath) [illegible] of San Francisco, State of California

I, FONG KIM QUON (Full name of witness), being duly sworn, depose and say that I reside at 935 Stockton Street, San Francisco, California (Street and number) (City) (State) (Country); that I am 29 years of age; that I am a citizen of the United States, having been:

(a) Born in the United States at San Francisco, California on July 7, 1922 (City) (State) (Month) (Day) (Year), (or)

(b) naturalized on Certificate of Identity No. 73728 issued S.F. September 4, 1936 (Month) (Day) (Year) by (Court) at (City) (State), Certificate No. ;

that for 10 years last past I have personally known the petitioner herein; that I have been in contact with the petitioner during the year last past under the following circumstances Petitioner is a friend - see him frequently

; that the petitioner is a responsible individual able to support the prospective immigrant(s) in whose behalf the petition has been executed; and that the statements made in the foregoing petition are true and correct to the best of my knowledge and belief.

FONG KIM QUON (Signature of second witness)

Subscribed and sworn to before me this 10 day of [illegible], A. D. 19 51, at San Francisco, Calif.

[SEAL] My Commission expires February 8, 1953 (Signature of officer administering oath) Notary Public in and for the City and County of San Francisco, State of California

TO THE PETITIONER.—Be sure that you have answered all questions; that you and your witnesses have signed and sworn to this form; and that you have attached all documentary evidence required by the instructions, including documentary evidence of your finances and (if you were born in the United States) your birth certificate. A delay will occur if your petition is not properly executed and supported by the necessary evidence. When entirely completed, submit your petition, in duplicate, with the required documentary evidence, to an office of the Immigration and Naturalization Service as indicated in instruction No. 8.

Date January 15, 19 52

Considered, and the Honorable Secretary of State is hereby respectfully informed that the person(s) named below is/are entitled to the status indicated:

Nonquota status under subdivision (a) of section 4 of the Immigration Act of 1924, as amended

NAME:

CHIN: Bick Way

Preference status under paragraph (1), subdivision (a) of section 6 of the Immigration Act of 1924, as amended

NAME:

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA
JAN 30 1952
HONG KONG

PETITION APPROVED
Bruce G. Barber
District Director
San Francisco District.

Approved by direction of the Attorney General

1952 JAN 21

Commissioner.

DO NOT WRITE IN THIS SPACE

AMERICAN CONSUL AT T. J.
QUOTA STATUS AUTHORIZED AS SHOWN IN THE APPROVAL ABOVE.
JAN 22 1952
FOR THE SEC. OF STATE
CHIEF, VISA DIVISION

pective immigrants will not become public charges during their stay in the United States.

9. That this affidavit is made by me for the purpose of assisting the American consul and the immigration and naturalization service in determining that the above-named persons are not persons who will become public charges in the event they are admitted to the United States.

William H. Long
(Signature of deponent)

SUBSCRIBED AND SWORN TO BEFORE ME THIS

17 day of October A. D. 1947

at San Francisco, California

[illegible]
(Signature of officer)

NOTARY PUBLIC
In and for the City and County of San Francisco
State of California
(Title of officer)

My Commission Expires February 8, 1953.

Nature of Evidence of Net Worth To Be Submitted.—The deponent must submit in duplicate evidence of net worth as follows:

1. Statement from an officer of the bank, postal or other financial institution in which you have deposits giving the following details regarding your bank account: (1) Date account opened, (2) Total amount deposited for past year, (3) Present balance.
2. Statement of employer, preferably on his business stationery, showing: (1) Date and nature of employment, (2) Salary paid, (3) Whether position temporary or permanent.
3. If self-employed: (1) Copy of last income tax return filed or (2) report of commercial rating concern.
4. List containing serial number and denomination of bonds and name of purchaser.

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